

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

EDWARD J. RENAUER, SR., et al. :
 :
v. : Civil Action No. DKC 09-0140
 :
DISCOVERY CREEK :
CHILDREN'S MUSEUM OF :
WASHINGTON, INC., et al. :
 :

MEMORANDUM OPINION

Plaintiff seeks leave to take the deposition of Jasmine McKenzie, a former employee of Defendant. Plaintiff asserts that Ms. McKenzie was likely inside the museum building at the time of the occurrence, although she did not witness the event. She is said to have tended Mrs. Renauer at the scene. Defendant Discovery Creek Children's Museum of Washington, Inc., opposes the motion, primarily on the ground of lack of diligence.

The event happened in November, 2005, and Defendant asserts that Plaintiffs knew of Ms. McKenzie and her presence at the museum as early as three days later. Furthermore, Defendant included her identity in discovery responses shortly after suit was filed. The parties began discovery upon the issuance of the initial scheduling order in January 2009, and the deadlines were extended on several occasions. Plaintiffs do not contest Defendant's assertion that they did not undertake any formal efforts to obtain discovery about and from Ms. McKenzie until very recently. Nor did the absence of the deposition testimony prevent the preparation of Plaintiffs'

experts' opinions. Indeed, if fact discovery were to be taken at this late date, it is likely that the expert discovery would have to be supplemented.

Although Ms. McKenzie recently suffered personal injuries that have caused her to become somewhat unavailable through defense counsel, Plaintiffs have not shown that their interest in taking discovery from her is of significant importance. They did not seek to obtain that discovery before obtaining expert reports, nor did their efforts to obtain informal contact have any sense of urgency until just before the close of discovery. Defendant has stated that they will not call her as a witness.

For the above stated reasons, Plaintiffs' motion is DENIED.
A separate order will follow.

_____/s/_____
DEBORAH K. CHASANOW
United States District Judge